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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,898	10/19/2001	Robert D. Swain	213256	4153

23460 7590 11/06/2003

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EXAMINER

HEITBRINK, JILL LYNNE

ART UNIT PAPER NUMBER

1732

DATE MAILED: 11/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,898

Applicant(s)

SWAIN ET AL.

Examiner

Jill L. Heitbrink

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 51-161 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 51-87 and 92-158 is/are allowed.
- 6) ☒ Claim(s) 88-91 and 159-161 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Terminal Disclaimer

1. The terminal disclaimer filed on September 24, 2003 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent 6,306,319 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Allowable Subject Matter

2. Claims 51-87, 92-158 are allowed.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 88, 90, 91 and 159-161 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Campo et al. Pat. No. 5,559, 173.

5. Campo et al. discloses providing a polymer and materials of different colors, melting the materials and forming a product. The color value of the product is measured and compared to a desired value. See col. 4, lines 16-30, col. 5, lines 14-33 and col. 9, lines 34-45. Campo et al. discloses that the color differences indicate inaccuracies and other anomalies in processing including ultimate degree of constituent inter-mixing achieved during processing, see col. 1, lines 39-60.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 88-91 and 159-161 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rudolph Pat No. 4,684,488.

8. Rudolph discloses a first and second color at col. 4, lines 5-8. The supply of the concentrates and additives is adjusted when the coloration is varied in the product. This variation is caused by a change in the performance of the machine. Rudolph states at col. 1, lines 63-66, "heretofore, even the same color concentrate and/or pigment and despite an established an accurately maintained composition, the shade or coloration of each new production batch differed."

9. Rudolph obtains the color at different times while within the end of the extruder. It would have been obvious to a person of ordinary skill in the art to measure the color value on the part after leaving the extruder since this would simplify the structure of the extruder barrel (since the probe in the wall and possible leakage about the probe is avoided).

Response to Arguments

10. Applicant's arguments filed September 24, 2003 have been fully considered but they are not persuasive. Applicant argues that there is no motivation or suggestion in Rudolph to measure the color value on the part after leaving the extruder. The

examiner disagrees. Rudolph teaches the precision necessary for providing the probe in the wall of the extruder. The measurement of the color is clearly after the product is mixed, see Abstract lines 4 and 5 "producing a mixed plastic product of determined coloration". Additionally Rudolph measures the coloration in comparison to a sampled part 27. Therefore, the knowledge of how to perform color determination on a product would have been obvious in view of the multiple teachings in Rudolph and motivation of the prevention of leakage of a simplified extruder barrel.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jill L. Heitbrink whose telephone number is 703-308-0673. The examiner can normally be reached on Monday - Friday 9:30-2:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Colaianni can be reached on 703-305-5493. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Jill L. Heitbrink
Primary Examiner
Art Unit 1732

jlh